

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Glenn S. Yamada)	File No.: EB-FIELDWR-12-00001081
)	NAL/Acct. No.: 201232780001
Kenai, Alaska)	FRN: 0021897384

FORFEITURE ORDER

Adopted: October 29, 2013**Released: October 30, 2013**

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of five hundred dollars (\$500) to Glenn S. Yamada, a Citizens Band (CB) radio operator in Kenai, Alaska, for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act),¹ and Sections 95.409(a) and 95.411(a)(1) and (b) of the Commission's rules (Rules).² The noted violations involved Mr. Yamada's operation of a radio transmitter without the requisite Commission authorization.

II. BACKGROUND

2. On July 18, 2012, the Enforcement Bureau's Anchorage Resident Agent Office (Anchorage Office) issued a Notice of Apparent Liability for Forfeiture (NAL)³ for twelve thousand, five hundred dollars (\$12,500) to Mr. Yamada for operating a non-certificated CB transmitter with a radio frequency (RF) linear amplifier which voided his authority to operate his CB station. In response to the NAL, Mr. Yamada does not deny the violations, but states that he did not intend to violate the Act or the Rules and that he is unable to pay the forfeiture.⁴

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and the *Forfeiture Policy Statement*.⁷ In examining Mr. Yamada's response, Section 503(b)(2)(E) of the Act requires that the Commission take into account the

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 95.409(a), 95.411(a)(1), (b).

³ *Glenn S. Yamada*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 7974 (Enf. Bur. 2012) (NAL). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

⁴ See Response from Glenn S. Yamada, to Anchorage Resident Agent Office, Western Region, Enforcement Bureau (Aug. 3, 2012) (on file in EB-FIELDWR-12-00001081) (NAL Response).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (Forfeiture Policy Statement).

nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸

4. We affirm the *NAL*'s finding that Mr. Yamada violated Section 301 of the Act, and Sections 95.409(a) and 95.411(a)(1) and (b) of the Rules.⁹ Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in accordance with the Act and with a license granted under the provisions of the Act.¹⁰ Section 95.404 of the Rules states that CB operators are not required to have individual licenses because they are authorized by this rule to operate a CB station, provided, however, that they operate the station in accordance with Subpart D of Part 95 of the Rules (CB Rules).¹¹ Section 95.409(a) of the Rules states that CB operators must use FCC certificated CB transmitters at their CB stations and that the use of a transmitter that is not FCC certificated voids their authority to operate the station.¹² Furthermore, Section 95.411(a)(1) of the Rules states that CB operators may not attach external RF power amplifiers (sometimes called linears or linear amplifiers) to certificated CB transmitters in any way.¹³ Section 95.411(b) of the Rules states that there are no exceptions to this rule and that use of a power amplifier voids a CB operator's authority to operate the station.¹⁴

5. As reflected in the *NAL*, an Anchorage Office agent identified Mr. Yamada as the operator that the Commission's High Frequency Direction Finding Center observed interfering with safety of life operations on the frequency 21.965 MHz over multiple days in January and February 2012.¹⁵ The agent's subsequent inspection of Mr. Yamada's CB radio station revealed that Mr. Yamada was operating a non-certificated transmitter with an RF linear amplifier.¹⁶ Mr. Yamada admitted to the agent that he operated the devices for several weeks.¹⁷ Such operation voided Mr. Yamada's authority to operate his CB radio station under the CB Rules.¹⁸ Based on the undisputed evidence, we conclude that Mr. Yamada willfully and repeatedly violated Section 301 of the Act, and Sections 95.409(a) and 95.411(a)(1) and (b) of the Rules by operating a radio transmitter without the requisite Commission authorization.¹⁹

6. In response to the *NAL*, Mr. Yamada requests cancellation of the \$12,500 forfeiture, asserting first that he did not intentionally violate the Act and the Rules.²⁰ Under the applicable statute, the Commission need not demonstrate an intent to violate a rule to make a finding that a licensee engaged in

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ See *NAL* *supra* note 3.

¹⁰ 47 U.S.C. § 301.

¹¹ 47 C.F.R. § 95.404.

¹² 47 C.F.R. § 95.409(a).

¹³ 47 C.F.R. § 95.411(a)(1).

¹⁴ 47 C.F.R. § 95.411(b). The FCC will presume a CB operator used a linear or other external RF power amplifier if the amplifier is located in the operator's premises and if there is other evidence showing that the station was operated with more power than authorized. See 47 C.F.R. § 95.411(c).

¹⁵ *NAL*, 27 FCC Rcd at 7976, para 6.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ As required by the *NAL*, Mr. Yamada submitted a written statement, which states that he is still engaged in CB operations and is using a certified transmitter that is not attached to a linear amplifier. See Statement of Glenn S. Yamada, to Anchorage Office, Western Region, Enforcement Bureau (Aug. 3, 2012) (on file in EB-FIELDWR-12-00001081).

²⁰ *NAL Response* at 1.

willful misconduct. As stated in the *NAL*, Section 312(f)(1) of the Act,²¹ which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[a]s defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law.”²² As the facts are undisputed that Mr. Yamada operated a non-certificated transmitter with an RF linear amplifier, we find that his violation of Section 301 of the Act, and Sections 95.409(a) and 95.411(a)(1) and (b) of the Rules was therefore willful according to Commission precedent.

7. Mr. Yamada also contends that he is unable to pay the forfeiture and submits three years of tax returns to support his claim.²³ With regard to an individual’s or entity’s inability to pay a claim, the Commission has determined that gross income or revenues are generally the best indicator of an ability to pay a forfeiture.²⁴ Based on the financial documents provided by Mr. Yamada, we find sufficient basis to reduce the forfeiture to \$500.²⁵ Therefore, after consideration of the entire record and the factors listed above, we find that a forfeiture in the amount of \$500 is warranted.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission’s rules, Glenn S. Yamada **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred dollars (\$500) for violations of Section 301 of the Act, and Sections 95.409(a) and 95.411(a)(1) and (b) of the Rules.²⁶

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.²⁷ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²⁸ Glenn S. Yamada shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the *NAL*/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000,

²¹ 47 U.S.C. § 312(f)(1).

²² *NAL*, 27 FCC Rcd at 7975, para. 4 n.8 (quoting H.R. Rep. 97-765, 97th Cong. 2d Sess. 51 (1982)).

²³ See *NAL Response* at Attachment 1.

²⁴ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Hoosier Broadcasting Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 8640 (2000) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues).

²⁵ The \$500 forfeiture falls within the percentage range that the Commission has previously found acceptable. See *supra* note 24.

²⁶ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 95.409(a), 95.411(a)(1), (b).

²⁷ 47 C.F.R. § 1.80.

²⁸ 47 U.S.C. § 504(a).

²⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

10. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁰ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

11. IT IS FURTHER ORDERED that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Glenn S. Yamada at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

³⁰ See 47 C.F.R. § 1.1914.